

A. YADHAV
v.
STATE OF KARNATAKA
(Criminal Appeal No.102 of 2001)

NOVEMBER 25, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

Penal Code, 1860 – ss. 302 and 394 – Prosecution under – Circumstantial evidence – Acquittal by trial Court – Conviction by High Court – On appeal, held: Circumstances highlighted by High Court to hold the accused guilty are relevant – Conviction justified.

Evidence – Circumstantial evidence – Reliance on – Held: Conviction can be based on such evidence – Condition precedent for reliance before conviction discussed.

Appellant-accused No.2 was prosecuted u/ss. 302 and 394 IPC alongwith accused No.1. Prosecution case was based on circumstantial evidence. The circumstances relied on against the appellant-accused were that he was acquainted with the prime accused (A-1); that he was found near the place of incident alongwith A-1 while going to the flat of the deceased persons on the fateful day, whereafter the deceased were not heard/ seen alive; that A-1 pointed out appellant (A-2) as his accomplice; that as per his voluntary statement pillow and pillow-cover alleged to have been used for smothering both the deceased, were recovered; and that chance finger print of A-2 was found from the scene of occurrence.

Trial Court convicted A-1 u/ss. 302 and 394 IPC and acquitted appellant-accused giving him benefit of doubt.

A Against the order of trial court three appeals were filed,
one by A-1 challenging conviction, the other two were
filed by the State, one for enhancement of sentence of
A-1 and the other against acquittal of appellant-accused.
High Court allowed the appeal of the State challenging
B acquittal of appellant-accused while dismissing the other
two appeals. Hence, the present appeal by appellant-
accused.

Dismissing the appeal, the Court:

C HELD: 1. The circumstances highlighted by the
prosecution against the appellant were that he was
acquainted with accused No. 1; that he was found near
the place of incident along with Accused No.1 going to
D the flat of the deceased on 8.8.1992 at about 8.30 pm;
that Accused No.1 pointed out the appellant as his
accomplice and after apprehension as per the voluntary
statement made by him, M.Os. 7 and 7a (pillow and pillow
E cover alleged to have been used for smothering both
the deceased) were recovered; that chance finger print
of the appellant were found from the scene of offence.
The High Court has referred to several factors including
the motive aspect. It has referred to the evidence of PWs.
2 & 4, who saw the appellant and A-1 after they came
out of the deceased's house. PW4 remembered that the
F appellant was sitting in the car with A1. The
circumstances highlighted by the High Court to hold the
appellant guilty cannot be said to be without relevance.
The High Court has rightly observed that the trial court
did not consider the relevant aspects while directing
G acquittal of the present appellant. [Paras 6 and 18] [581-
H; 582-A-B]

2. Where a case rests squarely on circumstantial
evidence, the inference of guilt can be justified only when
H all the incriminating facts and circumstances are found

to be incompatible with the innocence of the accused or the guilt of any other person. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touch-stone of law relating to circumstantial evidence. The condition precedent, before conviction could be based on circumstantial evidence, must be fully established. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established; the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; the circumstances should be of a conclusive nature and tendency; they should exclude every possible hypothesis except the one to be proved; and there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused. [Paras 9, 14 and 16] [578-A-B; 580-D; 581-B-F]

Hukam Singh v. State of Rajasthan AIR 1977 SC 1063; *Eradu and Ors. v. State of Hyderabad* AIR 1956 SC 316; *Earabhadrappa v. State of Karnataka* AIR 1983 SC 446; *State of U.P. v. Sukhbasi and Ors.* AIR 1985 SC 1224; *Balwinder Singh v. State of Punjab* AIR 1987 SC 350; *Ashok Kumar Chatterjee v. State of M.P.* AIR 1989 SC 1890; *Bhagat Ram v. State of Punjab* AIR 1954 SC 621; *C. Chenga Reddy and Ors. v. State of A.P.* 1996 (10) SCC 193; *Padala Veera Reddy v. State of A.P. and Ors.* AIR 1990 SC 79; *State of U.P. v. Ashok Kumar Srivastava* 1992 Cri.LJ 1104; *Hanumant Govind Nargundkar and Anr. v. State of Madhya Pradesh*, AIR 1952 SC 343; *Sharad Birdhichand Sarda v. State of Maharashtra*, AIR 1984 SC 1622; *State of Rajasthan v. Raja*

- A *Ram* 2003 (8) SCC 180; *State of Haryana v. Jagbir Singh and Anr.* 2003 (11) SCC 261 and *Kusuma Ankama Rao v State of A.P.* 2008 (10) SCR 89, relied on.

- B *Wills' Circumstantial Evidence"* (Chapter VI) by Sir Alfred Wills, referred to.

Case Law Reference:

	AIR 1977 SC 1063	Relied on.	Para 9
C	AIR 1956 SC 316	Relied on.	Para 9
	AIR 1983 SC 446	Relied on.	Para 9
	AIR 1985 SC 1224	Relied on.	Para 9
D	AIR 1987 SC 350	Relied on.	Para 9
	AIR 1989 SC 1890	Relied on.	Para 9
	AIR 1954 SC 621	Relied on.	Para 9
E	1996 (10) SCC 193	Relied on.	Para 10
	AIR 1990 SC 79	Relied on.	Para 11
	1992 Cr.LJ 1104	Relied on.	Para 12
F	AIR 1952 SC 343	Relied on.	Para 14
	AIR 1984 SC 1622	Relied on.	Para 15
	2003 (8) SCC 180	Relied on.	Para 17
G	2003 (11) SCC 261	Relied on.	Para 17
	2008 (10) SCR 89	Relied on.	Para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

No. 102 of 2001.

H

From the final Judgment and Order dated 29.5.2000 of the High Court of Karnataka at Bangalore in CrI. Appeal No. 749/1996.

Jaspal Singh, V.N. Raghupathy, Dharmpal, Ranji Thomas and Lagnesh Misra for the Appellant.

Sanjay R. Hrgde, A. Rohen Singh, Vikrant Yadav and Amit Kr. Chawla for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Karnataka High Court disposing of three criminal appeals which had their matrix in a judgment of learned 9th Additional Sessions Judge, Bangalore City in SC No.353 of 1992. Criminal Appeal No.51 of 1996 was filed by Krishnamutty A1 challenging the conviction and sentence passed against him for the offences punishable under Sections 302 and 394 of the Indian Penal Code, 1860 (in short the 'IPC') whereas Criminal Appeal No. 748 of 1996 was filed by the State challenging the inadequacy of sentence so far as Krishnamutty accused No. 1 was concerned and prayer was to enhance the sentence of imprisonment for life to death sentence. The last appeal i.e. 748 of 1996 was filed by the State challenging acquittal of present appellant- A. Yadav , A2.

2. Background facts in a nutshell are as follows:

Sunanda Varadhan, aged 73 years, (hereinafter referred to as the 'deceased' nos. 1 and 2) and her mother Rukamma, aged 90 years, came from well to do family and their children were settled outside Bangalore. They were staying at Flat No.201, First Floor, Richmond Place, Convent Road, Bangalore. They were often engaging the services of Accused-1 as part-time Driver to take them in and around Bangalore.

- A They had also engaged Selvi (P.W.3) as maid servant. They were often calling personally or on phone their relatives including Suvarna Prasad (P.W.6) daughter of deceased Sunanda, Lakshmi (P.W.8) deceased Rukamma's cousin sister, Nagamani (P.W.19) – niece of deceased Rukamma and Dr. Xavier (P.W.22) a retired Medical Practitioner, who was staying in the same apartments and was said to be looking after the health of both deceased. Similarly, Keshava Iyengar (P.W.1) whose daughter was married to the son of deceased Sunanda, used to visit both Sunanda and Rukamma at their apartment and look after their well being.

In the morning of 9-8-1992 (Sunday), as Suvarna Prasad (P.W.6) did not get regular phone call from Sunanda and inspite of repeated attempts made by her from Madras where she was staying could not contact her, she contacted Dr. Xavier, (P.W.22) and asked him to make enquiries about the well being of Sunanda and Rukamma and to intimate her. Accordingly Dr. Xavier (P.W.22) at about 10.00 A.M. tried to call both deceased Sunanda and Rukamma over phone and, when he could not get any reply, he thought that they might have gone out to meet their relatives and waited for some time. Even then when no reply was received from them, he contacted Keshava Iyengar (P.W.1) who, as stated earlier, is another relative of deceased Sunanda and Rukamma at about 6.00 P.M. Again Keshava Iyengar (P.W.1) thinking that both Sunanda and Rukamma might have gone out and having waited some time, came to the apartment and along with Dr. Xavier (P.W.22) went to Flat No.201 occupied by both the deceased. When both of them (P.W.1 and P.W. 22) went there, they found that door was locked from inside and as it was a latch-door and in spite of repeated pressing of the bell there was no response, Keshava Iyengar (P.W.1) with the help of a duplicate key which was with him opened the door and entered the house. There was darkness in the house and on switching the lights, in the bed-room they noticed, on separate cots, two

H

bodies covered with rugs and on verification they were found to be the dead bodies of Sunanda and Rukamma. Immediately, Keshava Iyengar (P.W.1) contacted his relatives at Bangalore as well as Suvarna Prasad (P.W.6) at Madras. Suvarna Prasad (P.W.6) informed Keshava Iyengar (P.W.1) that she would come to Bangalore immediately by the next available flight and not to do anything till then. Keshava Iyengar (P.W.1) thereafter locked the door of the flat and came back to his house. Next day, i.e., on 10-8-1992 in the morning at about 7'0 clock, after the arrival of Suvarna Prasad (P.W.6) and her husband, Keshava Iyengar (P.W.1) accompanied them and observed the conditions inside the house. As Suvarna Prasad (P.W.6) suspected that some of the articles including some jewelleryes on the persons of deceased were missing, suspecting foul play, Keshava Iyengar (P.W.1) requested to lodge a complaint with the jurisdictional police. Accordingly, Keshava Iyengar (P.W.1) contacted the D.I.G. of Police, who, in turn, instructed Narayan (P.W.29) the Police Inspector and Station House Officer of Ashokanagar Police Station, to look into the same. Narayan (P.W.29) proceeded to the spot wherein Keshava Iyengar (P.W.1) gave him the written complaint as per Exhibit P.1 which was sent to the police station for registration of the case and investigation. Srinivas (P.W.26) who was the Police Sub Inspector on receipt of the complaint registered a case in Cr.No.594 of 1992 for the offence punishable under Section 302 IPC against unknown persons and thus investigation was set in motion. Dog Squad and Finger Print Experts were called for. The Police Dogs could not lead to any suspicious place or person and as such it was given up. However, Narayanappa (P.W.28) (Finger Print Expert) found three chance finger prints on the T.V.Stand and two chance finger prints on the stainless steel cup kept near the dead bodies and took photograph of the same as well as the finger prints of the deceased and the nearby occupants, viz, Thavamani (P.W.2) – a watchman and Selvi (P.W.3) – maid servant, who had immediately come there. Ameer (P.W.10) – the police photographer took photos of the

A
B
C
D
E
F
G
H

A dead bodies and, after holding inquest mahazar as per Exhibits P.26 and P.27 the bodies were sent for autopsy. As surfaced during the inquest and subsequent recording of statements of witnesses especially from the statement of Thavamani (P.W.2) that the Accused-1 along with another person had visited previous night and went to the flat of the deceased, search for Accused-1 was made. Chandrashekar Nair (P.W.7) – Inspector COD), who was entrusted with search/apprehending the accused, found Accused-1 moving in his Ambassador car near the Manipal Hospital and he was apprehended and brought to the police station along with car. He was formally arrested by Narayan (P.W.29) at about 5.00 p.m. After the arrest, Accused-1 was interrogated and, as per his voluntary statement (Exhibit P.39), certain ornaments said to be belonging to both the deceased were recovered from the dickey of the Ambassador car bearing Registration No.KLD 6288, admittedly belonging to Accused-1. As during the interrogation Accused -1 pointed out involvement of Accused-2 in the crime, he was also arrested and interrogated. As per his voluntary statement, the Pillow and Pillow Cover (M.Os. 7 and 7a) said to have been used for smothering the deceased were also recovered from the apartment itself.

On 11-8-1992, Dr. Thirunavukkarasu (P.W. 12) and Dr. Manjunath (P.W. 13), the Doctors, who conducted autopsy on the dead bodies, gave their P.M. Reports as per Exhibits P.15 and P.19. Since both the Doctors did not find any physical external injuries, possibly due to decomposition and swelling of the bodies, they reserved their opinion subject to the reports sought from the Chemical Analysts and Forensic Science Laboratory to which certain articles including viscera of both the deceased were sent. Meanwhile, the Investigating officer, Narayan (P.W.29) recorded statements of many witnesses, obtained finger prints of the accused and sent the same along with the finger prints of the deceased obtained earlier by the Finger Print Experts. It is to be mentioned here itself that, after

the recovery of the pillow and pillow cover on the information given by Accused-2, the police suspected that the death was due to smothering. The Investigating Officer asked for clarification from the Medical Officers who conducted post mortem as to the possibility of the cause of death by smothering. Both Dr Thirunavukkarasu (P.W.12) and Dr. Manjunath (P.W.13) as per Exhibits P.15 and P.19 gave positive opinion regarding the possibility of cause of death of both Sunanda and Rukamma being due to smothering by smooth object like pillow. The Chemical Examination and Forensic Science Laboratory Report dated 19--10-1992 indicated no presence of any poison. After completing the investigation and receiving all the necessary documentary material, on 2-11-1992 charge sheet was filed against both the accused for the offences under Sections 302 and 394 read with Section 34 IPC.

As the accused denied the charges and claimed to be tried, they were tried in S.C.No.353 of 1992. In order to establish the guilt of the accused, the prosecution examined 29 witnesses got marked Exhibits P.1 to P.42 as well as M.Os.1 to 17. The accused denied the prosecution case in toto and after marking certain statements from the evidence of P.Ws. 2 and 4 as Exhibits D.1 to D.5, the accused closed their case without further evidence.

Considering the material placed before the trial Court in the form of oral and documentary evidence, the trial Court held Accused-1 alone guilty of the offences under Sections 302 and 394 IPC. However, finding certain discrepancies and lacunae in so far as the evidence against Accused-2 is concerned, he was given benefit of doubt and was acquitted of all the charges. Hence, the present appeal has been filed.

As noted above different appeals were filed, one by the accused No.1 while two other filed by the State for

A enhancement of sentence in case of A1 and questioning correctness of the order of acquittal so far as the A2 is concerned.

B The High Court by the impugned judgment allowed the appeal so far as the State is concerned in respect of the present appellant and the other two appeals were dismissed. Questioning correctness of the judgment of the High Court setting aside the order of acquittal the present appeal has been filed.

C 3. Learned counsel for the appellant submitted that the trial court had analysed the evidence in great detail and had directed acquittal so far as the present appellant is concerned. Without analyzing the evidence in detail and without recording reasons as to how the judgment of the trial court suffered from any infirmity, interference was made.

D 4. It is submitted that the view taken by the trial court was a reasonable view and the High Court should not have interfered.

E 5. Learned counsel for the respondent-State on the other hand supported the judgment of the High Court.

F 6. The present case is based on circumstantial evidence. The circumstances highlighted by the prosecution are as follows:

1. Both the deceased were residing at flat No.201, Richmond Place Apartments, Convent Road, Bangalore;

G 2. Accused-1 was often engaged by the deceased as part-time Driver and as such knew them very well;

3. Both the deceased were alive till 8.00 or 8.30 PM on 8-8-1992;

H

4. At about the same time both the accused were seen going towards the apartment; A

5. After the night of 8-8-1992 both Sunanda and Rukamma were not seen alive;

6. Accused-1 was in need of money for having purchased a car by taking loan; B

7. Recovery of M .Os .1 to 4 (gold ornaments) belonging to both the deceased on the information furnished by Accused-1 during interrogation and recovery of the same from his car as pointed out by Accused No.1. C

Similariy in so far as Accused 2 is concerned, the circumstances are:-

1. Accused 2 was acquainted with accused 1' D

2. He was found near the place of incident along with Accused No. 1 going to the flat of the deceased on 8.8.1992 at about 8.30 pm. E

3. Accused No. 1 pointed out accused 2 as his accomplice and after apprehension as per the voluntary statement made by Accused 2 M.Os. 7 and 7a(pillow and pillow cover alleged to have been used for smothering both the deceased) were recovered; F

4. Finding of the chance finger print of Accused 2 from the scene of offence.

7. So far as the present appellant is concerned the circumstances 2 to 4 are of relevance. G

8. The parameters while dealing with the circumstances have been considered by this Court in several cases.

9. It has been consistently laid down by this Court that H

A where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh v. State of Rajasthan* AIR (1977 SC 1063); *Eradu and Ors. v. State of Hyderabad* (AIR 1956 SC 316); *Earabhadrappa v. State of Karnataka* (AIR 1983 SC 446); *State of U.P. v. Sukhbasi and Ors.* (AIR 1985 SC 1224); *Balwinder Singh v. State of Punjab* (AIR 1987 SC 350); *Ashok Kumar Chatterjee v. State of M.P.* (AIR 1989 SC 1890). The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram v. State of Punjab* (AIR 1954 SC 621), it was laid down that where the case depends upon the conclusion drawn from circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and bring the offences home beyond any reasonable doubt.

E 10. We may also make a reference to a decision of this Court in *C. Chenga Reddy and Ors. v. State of A.P.* (1996) 10 SCC 193, wherein it has been observed thus:

F "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. G Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....".

H 11. In *Padala Veera Reddy v. State of A.P. and Ors.* (AIR 1990 SC 79), it was laid down that when a case rests

upon circumstantial evidence, such evidence must satisfy the following tests: A

"(1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established; B

(2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused; C

(3) the circumstances, taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and D

(4) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. E

12. In *State of U.P. v. Ashok Kumar Srivastava*, (1992 CrLJ 1104), it was pointed out that great care must be taken in evaluating circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. It was also pointed out that the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of guilt. F

13. Sir Alfred Wills in his admirable book "Wills' Circumstantial Evidence" (Chapter VI) lays down the following rules specially to be observed in the case of circumstantial evidence: (1) the facts alleged as the basis of any legal inference must be clearly proved and beyond reasonable doubt G

H

A connected with the factum probandum; (2) the burden of proof is always on the party who asserts the existence of any fact, which infers legal accountability; (3) in all cases, whether of direct or circumstantial evidence the best evidence must be adduced which the nature of the case admits; (4) in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation, upon any other reasonable hypothesis than that of his guilt, (5) if there be any reasonable doubt of the guilt of the accused, he is entitled as of right to be acquitted".

C 14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested by the touchstone of law relating to circumstantial evidence laid down by the this Court as far back as in 1952.

D 15. In *Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh*, (AIR 1952 SC 343), wherein it was observed thus:

E "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

H 16. A reference may be made to a later decision in *Sharad Birdhichand Sarda v. State of Maharashtra*, (AIR 1984

SC 1622). Therein, while dealing with circumstantial evidence, it has been held that onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established;

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(3) the circumstances should be of a conclusive nature and tendency;

(4) they should exclude every possible hypothesis except the one to be proved; and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

17. These aspects were highlighted in *State of Rajasthan v. Rajaram* (2003 (8) SCC 180), *State of Haryana v. Jagbir Singh and Anr.* (2003 (11) SCC 261) and *Kusuma Ankama Rao v State of A.P.* [2008 (7) JT 360].

18. The High Court has referred to several factors including the motive aspect. It has referred to the evidence of PWs. 2 & 4, who saw A1 & A2 after they came out of the

A deceased's house. PW4 remembered that A2 was sitting in the car with A1. The circumstances highlighted by the High Court to hold the present appellant guilty cannot be said to be without relevance. The High Court has rightly observed that the trial court did not consider the relevant aspects while directing acquittal of the present appellant. We find nothing infirm in the conclusions of the High Court to warrant interference.

19. The appeal is dismissed.

C K.K.T. Appeal dismissed.